IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1969 OF 2005

IN

WRIT PETITION NO. 5611 OF 2003

Mrs. Manju Ashok Motwani ..Petitioner.
wife of Mr. Ashok G.Motwani

Versus

Mr. Shazad Khan S/o.Gulnawaz Khan ..Respondents.
and Others.

Mr. S.R. Singh for the Petitioner.
Mr. S.M.Vidhyarthi for the Respondent No.2.

CORAM : S. A. BOBDE, J.

DATED : 16TH SEPTEMBER, 2005.

P.C.:

1. Rule returnable forthwith.

2. Mr. Vidhyarthi, Advocate, waives service of rule on behalf of the Respondent No.2.

3. Heard by consent.

4. At the request of the learned counsel for the petitioner, the name of respondent No.1 is allowed to be deleted only for the purpose of this petition. He shall remain a party before the Motor Accidents Claims Tribunal at Kalyan.

5. The petitioner has challenged the order dated 24.01.2003 by which the M.A.C.T. has observed that she is not entitled to file application on behalf of her husband under section 166 and 140 of the Motor Vehicles Act, 1988. No reason has been given by the court except that the court read Order 32 of C.P.C. Mr. Singh, the learned counsel for the petitioner points out and in my opinion rightly that the petitioner could not have been held dis-entitled to file this application in view of the fact that her husband on whose behalf claim petition is filed before the Tribunal has been totally incapacitated in the accident and he is under semi comatose condition.

6. In the circumstances, I am of the view that the petitioner ought to be allowed to proceed with the application before the M.A.C.T. However, the respondent shall be at liberty to question the

correctness of the petitioner's stand that the husband is incapable of pursuing the petition on his own.

7. The claim application filed by the petitioner on behalf of the claimant i.e. Ashok Gopaldas Motwani be registered and proceeded with in accordance with law. It is made clear that the Tribunal shall not pass any operative order without serving the registered owner of the vehicle in accordance with law.

8. Rule made absolute in the above terms.

DT.16.09.05 (S.A.BOBDE,J)

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